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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,135	05/31/2001	Brandon James Yoe	50623.00168	1923

7590 09/21/2005

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SAN FRANCISCO,, CA 94111-3492

EXAMINER
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NGUYEN, CAMTU TRAN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/872,135

Applicant(s)

YOE ET AL.

Examiner

Camtu T. Nguyen

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,10-32,37-39,41-44,46-50,53-59,61 and 63-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,10-32,37-39,41-44,46-50,53-59,61 and 63-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Amendment*

This Office Action is in response to applicant's amendment filed on June 28, 2005.

Claims 2, 4, 8, 9, 33-36, 40, 45, 51, 52, 60, 62, and 82-85 have been cancelled. Claim 65 has been amended.

Applicant is first of all respectfully reminded that claims in a pending application should be given their broadest reasonable interpretation. See *In re Pearson*, 181 USPQ 641 (CCPA 1974). For example, the broadest reasonable interpretation of the claims of the instant invention as written requires only that one of elements A and B exist in the inventive apparatus.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 3, 5-7, 10-16, 21-32, 37-39, 46-50, 53-59, 61, 63-82 are rejected under 35 U.S.C. 102(a) as being anticipated by Turnlund et al (Patent No. 6,296,603. Turnlund et al discloses in Figures 3 and 5 a conventional stent-graft delivery system (28) comprising an expandable radioisotope stent-graft (23) with a deformable, tubular stent (20) mounted onto the

Art Unit: 3743

balloon (31) at the distal portion of the stent-graft delivery system (28). Turnlund teaches preferably radioisotopes include alpha, beta, or low energy gamma emitters with the endovascular radiation dose ranges from about 1 Gy to about 600 Gy. The stent-graft (23) constructed to deliver a dose of endovascular radiation upon the selected region (21) and the anatomy of the stent (25) include the central region (38), the proximal portion (41), and the distal portion (40) and Turnlund further teaches that stent-graft (23) having an uniform radioactivity longitudinally therealong will not emit at a uniform rate of radiation near the proximal and distal portions (41, 40), as compared to the center region (38) of the stent graft. Figure 6 illustrates a graphical chart illustrating the Dose to Tissue vs. Distance From the Surface of Stent, and in this chart, the amount of radiation dosage gradually decreases along the length of the stent-graft (23) from a point inward of a proximal portion (41) to near the proximal end of the stent-graft (23) and as well as from a point inward of a distal portion (40) to near the distal end of the stent-graft (23). The Turnlund et al device is capable of performing the steps as recited in the method claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-20, 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turnlund et al (U.S. Patent No. 6,296,603). Turnlund et al discloses in Figures 3 and 5 a

Art Unit: 3743

conventional stent-graft delivery system (28) comprising elements set forth in these claims including the stent graft (23) having a coating of biological growth factor to form a template in which cells may adhere. As regards to forming of coating in dipping or spraying recited in these claims is an obvious matter of design choice which provides no unusual, unobvious, or unexpected results and is therefore deemed to fall within the purview of ordinary engineering technique.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-499. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

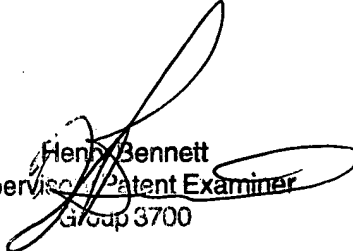
Application/Control Number: 09/872,135

Page 5

Art Unit: 3743

Camtu Nguyen

September 19, 2005

  
Henry Bennett  
Supervisor/Patent Examiner  
Group 3700